

Decision 02-04-007 April 4, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Establish
Consumer Rights and Consumer Protection Rules
Applicable to All Telecommunications Utilities.

Rulemaking 00-02-004
(Filed February 3, 2000)

O P I N I O N

This decision awards \$17,609.85 to The Utility Reform Network (TURN) in compensation for contributions to Decision (D.) 01-07-030. That decision adopted interim rules governing the inclusion of non-communications charges in telephone bills.

1. Background

The Commission's adoption of the interim rules was done within the broader rulemaking devoted to developing comprehensive new telephone consumer protection rules. In a future final decision, the Commission is expected to issue rules that will incorporate and possibly modify the interim rules adopted in D.01-07-030.

While TURN could have deferred seeking compensation for its contribution until a final decision issues, it has opted to submit an interim request for its contribution to D.01-07-030. TURN states that the issues addressed in the interim decision are sufficiently distinct from the issues to be addressed in the final decision that it is relatively easy to identify the resources TURN devoted to the interim decision. The Commission has said previously that intervenors may file for compensation for their contribution to interim

Commission decisions rather than wait for the last decision in a particular proceeding. (*See* D.97-10-026.)

Administrative Law Judge McVicar on October 6, 2001, found TURN eligible to seek intervenor compensation in this proceeding.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Pub. Util. Code § 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. TURN filed its NOI on September 12, 2001, along with a motion seeking approval to late file by one day. Because of the events of September 11, the motion is granted.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding. Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. Contributions to Resolution of Issues

A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. It may advance a specific policy or procedural recommendation that the Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

As noted in D.01-07-030, the Legislature enacted Sections 2889.9 and 2890 of the Public Utilities Code to deter unauthorized charges on telephone bills, or "cramming." The legislation authorized the Commission to adopt rules to deal with the practice. On January 3, 2001, Commissioner Wood issued a first draft of proposed rules governing non-communications charges on telephone bills and asked for comments. Revised rules were mailed out for comment on June 1, 2001. The rules ultimately adopted in D.01-07-030 reflect further revisions based on parties' comments and the Commission's own further study.

TURN participated throughout the process that led from the January 2001 draft rules to the final interim rules. Working in conjunction with Consumers Union, TURN submitted comments on the initial draft rules, the revised draft, and the draft decision adopting the final interim rules. The final rules adopt several of TURN's positions on issues, including the issues of revocation, billing errors, telephone company responsibilities to consumers, blocking option language, and the use of credit card regulations as a model.

3.1 Immediate Revocation

TURN argued that consumers must be able to revoke their general authorization for non-communications charges effective immediately. The draft rules made revocation effective within 24 hours. The final decision omitted the 24-hour standard and made it clear that consumers must be able to revoke “at any time.” TURN also proposed, and the Commission agreed, that revocation should be made without charge.

3.2 Defining Billing Errors

The draft rules did not contain a definition section and made no reference to billing errors. TURN suggested using the definition for billing error found in the federal Fair Credit Billing Act, 15 U.S.C. § 1666. The final decision includes TURN’s suggestion in its definition of “billing error.” The final decision also changed the complaint procedure section to refer to billing errors, in addition to unauthorized charges, as TURN had suggested.

3.3 Utility Responsibility

TURN urged that billing telephone companies should be the single point of contact for customer complaints, just as credit card companies are required to be such a contact for their customers. The final decision permits telephone companies to make an initial referral of some complaints to vendors, but requires that the telephone companies “retain ultimate responsibility for handling customer complaints of billing errors.”

3.4 Truth in Lending Act

The final decision relies on provisions of the federal Truth in Lending Act, 15 U.S.C. §§ 1601 *et seq.* and acknowledges that TURN contributed “good reasons to pattern these rules after the Truth in Lending Act.” (D.01-07-030, at 10.)

3.5 Verizon Rebuttal

TURN in its reply comments sought to rebut proposals by Verizon regarding cost recovery and a requirement that revocation be made in writing, rather than by telephone. Neither of these Verizon proposals was adopted in the final decision.

In sum, the Commission adopted TURN's recommendations on several major issues. TURN states that its contributions did not duplicate the showings of other parties, and it notes the differences in its recommendations from those of the Office of Ratepayer Advocates (ORA), the Attorney General, and Greenlining Institute/Latino Issues Forum. While acknowledging some overlap (the Attorney General also proposed reliance on the Truth in Lending Act; ORA proposed that revocation be without charge), TURN states that the parties for the most part focused on different issues. TURN notes that Pub. Util. Code § 1802.5 allow full compensation even in the event of some overlap. We conclude that TURN has shown that it avoided unnecessary duplication, and that it is not necessary to reduce the compensation award for duplication of the showings of other parties. We also find that TURN has demonstrated that it made a substantial contribution to D.01-07-030.

4. The Reasonableness of Requested Compensation

TURN requests compensation for all consultant expenses, direct expenses and attorney fees, for a total request of \$17,609.85. Documentation attached to the request shows the following compilation:

J. Anthony:

38.0 professional hours @ \$190	\$7,220.00
18.25 compensation hours @ \$95	1,733.75

R. Costa:

39.0 professional hours @ \$180	\$7,020.00
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R. Finkelstein:

1.5 professional hours @ \$280	\$420.00
4.0 compensation hours @ \$140	560.00

Other:

Copies	\$1047.00
Postage	182.54

Total	<u>\$17,609.85</u>
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4.1 Hours Claimed

As TURN's telecommunications research director, Regina Costa handled all research and much of the advocacy presentation in this matter. James Anthony, TURN's telecommunications attorney, prepared the comments on the draft decision as well as the request for compensation. Robert Finkelstein, supervising attorney, reviewed pleadings and participated in strategy. Appendix A to the request for compensation contains a daily listing of the tasks performed by TURN's personnel. TURN also appropriately breaks down time spent on various issues and activities. The 22.25 hours devoted to the compensation request is somewhat higher than what we are accustomed to seeing (*compare* 13.7 hours by the California Association of the Deaf in Rulemaking 00-05-001; 9 hours by TURN in Application 00-05-024). Even allowing for a learning curve for an attorney relatively new to such requests, we find it appropriate to reduce compensation for preparation time by 25%. With this adjustment, TURN's requested award is reduced by \$573.44 (*i.e.*, to

\$17,609.85). Apart from this adjustment, we find the claimed hours to be reasonable.

4.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the “market rate paid to persons of comparable training and experience who offer similar services.”

TURN seeks compensation for Regina Costa at the rate of \$180 per hour for the year 2001. This reflects an increase of \$20 per hour, or 12.5%, over the \$160 base rate approved for her work in the year 2000. (*See* D.01-08-011.) This is the first increase sought for Costa since 1996. TURN notes that Costa has worked in the telecommunications field for 16 years, is a former employee of the Washington Utilities and Transportation Commission, and serves on the telecommunications subcommittee of the National Association of State Utility Consumer Advocates. We agree that the rate requested for Costa is comparable to the market rate for consultants with Costa’s experience, and we adopt it.

TURN seeks an hourly rate of \$190 for attorney James Anthony. Anthony has a history of telecommunications policy work dating back to the early 1980s. He served previously as an associate at Paul & Hanley, a Bay area law firm, and with the Alameda County District Attorney’s Consumer and Environmental Protection Division. TURN notes that the rate sought is less than that approved for attorneys with similar experience. TURN has shown that the rate is reasonable, and we adopt it.

TURN requests an hourly rate of \$280 for work that Robert Finkelstein performed in this proceeding. This is the same rate previously approved by the Commission for his work in the year 2000. (*See* D.00-11-002.) TURN has made a sufficient showing of the reasonableness of this rate, and we adopt it.

4.3 Other Costs

TURN claims \$1,229.54 for costs relating to photocopying and postage, a reasonable sum that we adopt here.

5. Award

We award TURN \$17,609.85 for contributions to D.01-07-030. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after TURN filed this compensation request (November 26, 2001) and continuing until full payment is made. The award granted today should be paid from the intervenor compensation program fund, as described in D.00-01-020.

6. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day review and comment period is being waived.

Findings of Fact

1. TURN timely requested compensation for contributions to D.01-07-030 as set forth herein.
2. TURN requested hourly rates for its attorneys and expert that have already been approved by the Commission or that reflect market rates within the incoming of § 1806.
3. Except as explained in Section 9.1 of the foregoing Opinion, the hours claimed and the miscellaneous costs incurred by TURN in this proceeding are reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation.

2. TURN should be awarded \$17,609.85 for contributions to D.01-07-030 in this proceeding.

3. This order should be effective today so that TURN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$17,609.85 as set forth herein for substantial contributions to Decision (D.) 01-07-030.

2. The award should be paid from the intervenor compensation program fund, as described in D.00-01-020. Interest shall be paid at the rate earned on prime, three-month commercial paper as reported in the Federal Reserve Statistical Release, G.13, with interest beginning on November 26, 2001, and continuing until full payment has been made.

3. The comment period for today's decision is waived.

4. TURN's motion to late file its "notice of intent" by one day is granted.

This order is effective today.

Dated April 4, 2002, San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners